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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,076	01/18/2006	Takeshi Koda	8048-1138	3920
466 7590 10/01/2008 YOUNG & THOMPSON 209 Madison Street Suite 500 ALEXANDRIA, VA 22314			EXAMINER PENDLETON, DIONNE	
			ART UNIT 2627	PAPER NUMBER
			MAIL DATE 10/01/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/565,076

Applicant(s)

KODA ET AL.

Examiner

DIONNE H. PENDLETON

Art Unit

2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2007.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-26 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 16-26 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 18 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Priority

1. Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 16-26 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims of copending Application Nos. **11/710,465**, **11/710,547**, **11/710,963**, **11/710,968** and **10/565,075**. Although the conflicting claims are not identical, they are not patentably distinct from each other because of obvious wording variations. For example, Application

11/710,465 recites, "a write-once recording medium including a plurality of recording layers", while the immediate application recites, "a write-once-type recording medium".

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claim 21** recites the limitation "said second recording device", in line 2. There is insufficient antecedent basis for this limitation in the claim.
5. **Claim 26** recites the limitation "said spare area", in line 27. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 16-20 and 22-26** are rejected under 35 U.S.C. 102(e) as being anticipated by **Park (US Patent 7,233,550)**.

Regarding claim 16,

Park teaches a write-once-type recording medium (**column 2:17-18**) comprising:

a data area (**see “data area” in figure 3**) to record therein the record data;

a control information recording area (**see “lead-in” or “lead-out” areas in figure 3**), which includes a definite defect management area to record therein defect management information (**“DMA” in figure 3**) of said data area, to record therein information for controlling at least one of operations of recording and reading in said data area;

and a shared area (**“ISAO” OR “OSAO” in figure 3**) , which is disposed between said control information recording area and said data area, to record therein evacuation data which is record data to be recorded at a position of a defect in said data area and to temporarily record therein the defect management information (**“TDMA2” in figure 3**) of said data area, the evacuation data being recorded with one predetermined point which exists in said shared area as a start point, the defect management information being recorded with another predetermined point which exists at a different point from the one point as a start point, in said shared area (**column 6:4-25**).

Regarding claim 17,

Park teaches that the evacuation data is continuously recorded with the one point as the start point and the defect management information is continuously recorded with the another point as the start point, in the shared area **(column 5:39-50 discloses a linear replacement scheme).**

Regarding claim 18,

Park teaches that the one point corresponds to one end point in said shared area, and the another point corresponds to the other end point which faces the one point in said shared area **(column 5:39-41 discloses that the shared area (ISOA, OSAO) may be partly used for replacement data (evacuation data), thus corresponding to "one point"; while column 5:46-47 discloses that the "OSAO" includes a "TDMA" area (defect management information) corresponding to "another point").**

Regarding claim 19,

Park teaches that the evacuation data and defect management information are recorded, repeatedly, a plurality of times, in said shared area **(column 5:39-50 teaches a linear replacement scheme i.e., repeated recordation of data).**

Regarding claims 20 and 22,

Park teaches a recording apparatus and recording method of recording onto a write-once-type recording medium **(column 2:17-18)** comprising:

a data area (see “data area” in figure 3) to record therein the record data;

a control information recording area (see “lead-in” or “lead-out” areas in figure 3), which includes a definite defect management area to record therein defect management information (“DMA” in figure 3) of said data area, to record therein information for controlling at least one of operations of recording and reading in said data area;

and a shared area (“ISAO” OR “OSAO” in figure 3) , which is disposed between said control information recording area and said data area, to record therein evacuation data which is record data to be recorded at a position of a defect in said data area and to temporarily record therein the defect management information (“TDMA2” in figure 3) of said data area, the apparatus comprising:

a first recording device (“20” in figure 2) for recording the record data into said data area; and

a second recording device (which uses “27” in figure 2) for recording the evacuation data and the defect management information into said shared area (column 4:49-52) said second recording device recording the evacuation data with one predetermined point which exists in said shared area as a start point, the defect management information being recorded with another predetermined point which exists at a different point from the one point as a start point, in said shared area (column 6:4-25; also see column 5:39-41 discloses that the shared area (ISAO, OSAO) may be partly used for replacement data (evacuation data), thus corresponding to “one

point"; while column 5:46-47 discloses that the "OSAO" includes a "TDMA" area (defect management information) corresponding to "another point").

Regarding claims 23 and 24,

Park teaches a reproducing apparatus and reproducing method of recording onto a write-once-type recording medium **(column 2:17-18)** comprising:

a data area **(see "data area" in figure 3)** to record therein the record data;

a control information recording area **(see "lead-in" or "lead-out" areas in figure 3)**, which includes a definite defect management area to record therein defect management information **("DMA" in figure 3)** of said data area, to record therein information for controlling at least one of operations of recording and reading in said data area;

and a shared area **("ISAO" OR "OSAO" in figure 3)** , which is disposed between said control information recording area and said data area, to record therein evacuation data which is record data to be recorded at a position of a defect in said data area and to temporarily record therein the defect management information **("TDMA2" in figure 3)** of said data area, the apparatus comprising:

a first reading device/reproducing process **("20" in figure 2)** for reading the defect management information in said shared area; and

a reproducing device **(which uses "27" in figure 2)** for reproducing the record data recorded in said data area or the evacuation data recorded in said spare area on

the basis of the defect management information (**column 6:4-25 and see column 5:39-41**).

Regarding claims 25 and 26,

Park teaches a computer program product for recording/reproduction control in a computer-readable medium for tangibly embodying a program of instructions executable by a computer provided for a reproducing apparatus, said program making the computer function as at least a first portion of a recording/reading device and a second recording/reading device,

a data area (**see “data area” in figure 3**) to record therein the record data;

a control information recording area (**see “lead-in” or “lead-out” areas in figure 3**), which includes a definite defect management area to record therein defect management information (**“DMA” in figure 3**) of said data area, to record therein information for controlling at least one of operations of recording and reading in said data area;

and a shared area (**“ISAO” OR “OSAO” in figure 3**) , which is disposed between said control information recording area and said data area, to record therein evacuation data which is record data to be recorded at a position of a defect in said data area and to temporarily record therein the defect management information (**“TDMA2” in figure 3**) of said data area, the apparatus comprising:

a first reading/recording device (“**20**” in figure 2) for reading/recording the defect management information in said shared area; and

said reproducing/recording device (**which uses “27” in figure 2**) for reading/recording the evacuation/record data recorded in said data/shared area or the evacuation data recorded in said spare area on the basis of the defect management information.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIONNE H. PENDLETON whose telephone number is (571)272-7497. The examiner can normally be reached on 10:30-7:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wayne Young can be reached on 571-272-7582. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Dionne H Pendleton/
Examiner, Art Unit 2627

/Wayne Young/
Supervisory Patent Examiner, Art Unit 2627